



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

SENT VIA EMAIL TO: JonathanWiner@winerlegalservices.com

March 20, 2017

Jonathan Winer
Winer Legal Services, LLC
5276 Rome-Rock Creek Road
Rome, Ohio 44085

Re: Yuhasz Bros, LLC Properties in Ashtabula and Trumbull Counties, Ohio

Dear Mr. Winer:

I am writing in response to your letter dated March 10, 2017. Your letter seeks clarification of areas of your client's property that may be farmed while the parties work to resolve alleged Clean Water Act violations. The purpose of this letter is to provide information regarding EPA's investigation of alleged violations, as well as to provide you with clarification regarding use of the property.

Under Section 404(a) of the Clean Water Act, 33 U.S.C. § 1344(a), the discharge of dredged or fill material into waters of the United States requires a permit from the U.S. Army Corps of Engineers (the Corps). According to federal regulations, the term "discharge of dredged material" includes, "[a]ny addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation." 40 C.F.R. § 232.2 and 33 C.F.R. § 323.2(d)(1)(iii).

EPA is investigating alleged Clean Water Act violations by your client at its properties including: Ashtabula County Permanent Parcel Numbers: 610040000400, 610040000600, 610040000701 and Trumbull County Permanent Parcel Number 60901281 (the Site). Your client received what is commonly referred to as a "cease and desist" letter from the Corps dated September 27, 2016. According to that letter, the Corps determined that fill material had been discharged into federal jurisdictional wetlands and jurisdictional streams at the Site without the required authorization. Federal enforcement of Section 404 of the Clean Water Act is governed by a Memorandum of Agreement (MOA) between EPA and the Corps.¹ EPA is acting as the lead enforcement agency in this matter pursuant to Section III.D. of the MOA.

¹ <https://www.epa.gov/cwa-404/federal-enforcement-section-404-program-clean-water-act>.

As you know, Foresight Engineering Group (Foresight) conducted a wetland delineation of the Site in 2009-2010 (Foresight Delineation) on behalf of the previous owner, East 534, LLC. The Foresight Delineation identified approximately 500 acres of wetlands. EPA believes the wetlands identified by Foresight are "waters of the United States" under the Clean Water Act, because the wetlands abut tributaries to the Grand River, which is a traditionally navigable water. The Foresight Delineation did not evaluate the northern portion of the Site running along South Windsor Road. That area may also include wetlands and other waters subject to Clean Water Act jurisdiction.

During the week of April 3, 2017, representatives of EPA, the Corps, and Ohio EPA will be conducting an inspection of the Site. The inspection will assist EPA in its evaluation of your client's compliance with the Clean Water Act. EPA will assess the boundaries of the wetlands and other waters subject to Clean Water Act jurisdiction referenced in the Foresight Delineation, as well as any changes in those boundaries. EPA will also identify any wetlands and other waters subject to Clean Water Act jurisdiction in the northern portion of the Site mentioned above.

Following the inspection, EPA will work with the Corps to provide options for resolution of any non-exempt² discharge of dredged or fill material within the boundaries of waters and wetlands subject to Clean Water Act jurisdiction. Corps authorization is not required in non-wetland areas. As such, your client may farm in non-wetland areas. However, any non-exempt, unpermitted discharge of dredged or fill material within the boundaries of wetlands and waters subject to Clean Water Act jurisdiction may be considered a knowing violation of the Clean Water Act for which your client may be liable for penalties and injunctive relief.

I hope the above discussion provides clarity for you and your client. Following the April 2017 Site inspection, I would be happy to further discuss any issues related to the site, including resolution of the alleged Clean Water Act violations. In the meantime, please feel free to contact me at (312) 886-7187 or grubb.christopher@epa.gov.

Sincerely,



Christopher B. Grubb
Assistant Regional Counsel

² Yuhasz Bros, LLC has not demonstrated that it qualifies for the exemption at Section 404(f) of the Clean Water Act, 33 U.S.C. § 1344(f).

CC: Andrea Schaller, EPA Region 5
Tina Stonemetz, U.S. Army Corps of Engineers
Harold Keppner, U.S. Army Corps of Engineers
Kimberly Rowles, U.S. Army Corps of Engineers
Ed Wilk, Ohio EPA